Applicant asserts that Ko does not anticipate the present invention as it does not disclose, at least, the blade end portions converging to form a pointed tip that cuts the body wall without any additional instrument, as required by claim 24. In contrast, Ko specifically teaches a plurality of resilient wedge portions that form substantially "a blunt penetration end 18 (or tissue distending mechanism) that may be inserted through an opening in the body." Column 5, lines 35-43. The Examiner cites Fig. 9 and column 8, lines 42-45 of Ko as disclosing to one of skill in the art that the penetration end 18 can be used to cut a body wall itself. While each of the wedge sections 22a-22d, *when open*, may be considered somewhat pointed (best seen in Figure 10), when closed, the penetration end 18 is blunt for the purpose of inserting. This can be easily seen in the figure included by the Examiner in the outstanding Office Action in which the call-out for "Pointed tip for penetration of various layers of tissue" points to one of the wedge sections 22a-22d when in the *open* position (as illustrated by phantom lines). Thus, even the Examiner apparently recognizes that when closed for insertion, the wedge sections 22a-22d define a blunt tip. This closed blunt end must be first inserted, and then subsequently opened, in order to push through and dissect tissue. ("The opening of the wedge section causes distending of the tissue surrounding the outer surface of the wedge sections." col. 8, lines 49-51.) The opened wedge portions 22a-22d of the penetration end 18 which allow the Ko device to cut through tissue makes the device structurally different from the present invention as claimed, which requires a pointed tip able to achieve cutting of the body wall.

Unlike Ko, the present invention does not require these additional steps and/or devices to cut the body wall or tissue. The present invention functions to initially pierce, puncture and cut body skin or body wall, whereas the tissue distending function of Ko occurs after an incision is made, the dissectoscope is inserted, and the opened wedge sections are opened. (To use the dissectoscope 10, an incision is made in the skin sufficient to allow the outer sleeve 12 to be inserted through the opening caused by the in-

cision. col. 8, lines 37-40). While the Examiner states that it would be reasonable for one of skill in the art to recognize that the penetration end 18 can be used to cut the body wall itself, Applicant respectfully disagrees as the disclosure of the patent specifically teaches one of skill in the art away from this by teaching that an incision first must be made in the skin and that the penetration end 18 (or tissue distending mechanism) is blunt.

The Examiner has rejected claims 26-27 under 35 U.S.C 103(a) as unpatentable over Ko in view of U.S. Patent No. 5,320,627 to Sorenson *et al.* Sorenson *et. al.* does not disclose, teach or suggest the pivotable parts converging toward one another in a piercing position, wherein the blade end portions of the pivotable parts form the pointed tip as required by our claim 1 of the present invention. In contrast, Sorensen *et. al.* discloses tip members that do not themselves cut, but rather, form a protective cage around the cutting head. Column 7, lines 63-67.

Sorenson *et al.* teaches away from the present invention in which the claimed device itself cuts the body wall. The Sorenson *et. al.* device is to be inserted through an existing orifice or small incision. Column 1, lines 12-14, also column 4, lines 32-35. This same limitation of requiring a pre-existing incision is taught by Sorenson *et al.* in the operation of the first embodiment. Column 11, lines 36-40.

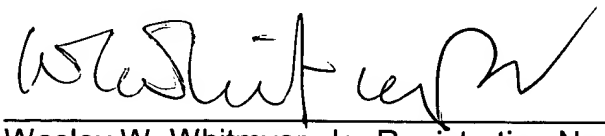
The Examiner cites Sorenson *et. al.* for disclosure of spring-biased joints biasing the pivotable parts away from one another to an operative position upon displacement of an elongate cutting tool 142 along a passage/lumen of trocar 103 and asserts that it would be obvious to provide such joints to bias the pivotable parts of Ko away from one another in operative position. Sorenson et. al. requires insertion/displacement of another instrument, a cutting tool, to bias the pivotable tip members away from one another in operative position. The spring-biased joints of claims 26-27 of the present invention bias the pivotable parts away from one another to an operative position upon displacement of the instrument itself along the passage. Further there is no motivation

to combine the spring biased joints of Sorenson *et al.* with the pivotable parts of Ko as they are inapposite in function. The spring-biased joints of Sorenson *et al.* function to form a protective cage around the cutting head and "prevent or minimize the likelihood of inadvertent puncture of the surrounding containment sac or organ" col. 13, lines 49-53), whereas the pivotal parts of Ko, as cited by the Examiner, function to dissect tissue. It is not logical to combine a feature that allows caging of the head and prevents cutting into a device that functions to distend or dissect tissue.

There is no disclosure in Sorenson *et. al.* of the providing spring-biased joints in the pivotable parts which form a pointed tip that allows for cutting the body wall without use of an additional instrument. Therefore, Applicant asserts that claims 26-27 are independently non-obvious.

The aforementioned remarks show claims 24-31 to be patentable over Ko and non-obvious over Ko alone and in view of Sorenson *et. al.* It is respectfully submitted that all of the claims in the application are in order for allowance, and early notice to that effect is respectfully requested.

Respectfully submitted,



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